

February 18, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's
Communications Infrastructure
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On February 14, 2013, Harold Feld, Senior Vice President, and Jodie Griffin, Staff Attorney, of Public Knowledge (PK) met with Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell.

PK discussed the Five Fundamentals framework it laid out in its Comments for the technological transition of the public switched telephone network (PSTN).¹ The transition of the PSTN is an opportunity for the Commission to reexamine the framework by which it measures and sets policy for phone service in the United States. The Five Fundamentals serve as a metric by which to evaluate the various proposals already made in this docket according to how well they serve basic principles, rather than simply arbitrating between parties' regulatory wish lists.

It is apparent that the transition to an IP-based network is currently underway, and that carriers already have strong incentive to upgrade their networks. This means that the Commission need not worry about creating regulatory incentives for a transition that is happening and will happen anyway, and that the Commission should not attempt to stop the carriers from upgrading to newer and more efficient technologies. Instead, the Commission must create a framework by which to evaluate parties' proposals and move forward through the transition. Public Knowledge urges the Commission to adopt the following Five Fundamental principles as its framework for the PSTN transition.

Service to All Americans. First, the Commission must continue to pursue service for all Americans. The United States should not be the first industrialized nation to step back from the goal of 100% penetration in basic voice service. This includes ensuring that the PSTN continues to offer access to individuals with disabilities and is affordable for users. A firm commitment to make basic service available to all Americans will serve to guide the Commission when unexpected problems inevitably arise during the transition.

¹ See Comments of Public Knowledge, *Comment Sought on the Technological Transition of the Nation's Communications Infrastructure*, GN Docket No. 12-353 (Jan. 28, 2013), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017160627>.

For example, when the transition to IP led to rural call completion problems, the Commission responded by proposing reporting requirements to better understand and solve the problem.² The Commission's motivation to take this problem so seriously is based on the fundamental premise that achieving service for all Americans is a top priority. Going forward, the Commission must continue to evaluate issues that arise in this transition according to the same fundamental principle.

Interconnection and Competition. The Commission must ensure that its policies continue to guarantee interconnection and competition in the market, both to preserve call quality across the country and to promote a robust competitive environment for voice services. Similarly, local number portability rules encourage competition by allowing consumers to respond to providers' price and service changes without losing their phone numbers, but the Commission's authority for these rules is currently largely based on ancillary authority. At this point, of course, it remains unclear what exactly will be the right rule for interconnection in an all-IP network, but the Commission must retain sufficient authority to ensure that voice calls are always completed, regardless of the technology used, location of the user, or carrier transporting the call.

Consumer Protection. The transition of the PSTN must also preserve consumer protections that have historically proven to greatly benefit users. Americans currently rely on a series of regulations to provide adequate protection when they communicate with one another, including privacy, truth-in-billing, slamming, and cramming rules. But today, the consumer protections that extend to VoIP services are based on ancillary authority, which may not prove to be enough when the traditional PSTN is no longer operating. The Commission must ensure that consumers remain adequately protected—including effective recourse for the timely resolution of complaints—throughout and after the IP transition.

Network Reliability. On a fundamental level, the PSTN must be able to guarantee that users' phone service will work consistently and reliably, on every network. A successful transition means that phone numbers will still work and calls will still go through with the same reliability they do today. Recent events like the Sandy-related outages and AT&T's U-Verse outage remind us that we cannot take the reliability of the post-transition PSTN for granted, and we must actively ensure that the network will be able to withstand the stress of major emergencies. This is, however, also an opportunity for creative thinking: for example, in emergency situations an IP-based PSTN could use mesh WiFi routers with solar panels as temporary hotspots during an outage, or the Commission could require carriers with compatible networks to offer data roaming during emergencies. The point is that the Commission should greet the PSTN transition with the resolve to maintain the same reliability guarantees the public has always enjoyed, and also stay alert to opportunities that upgraded technology may offer for new solutions.

Public Safety. Finally, the Commission must continue to ensure that users can use the phone system to call for emergency services. The Commission is already considering this issue with the Next Generation 9-1-1 transition, but the public safety element of the PSTN transition should be considered in context with the rest of the elements of the network upgrade. Some public safety initiatives may bear on other fundamental principles of the network. For example, geolocation

² *Rural Call Completion*, Notice of Proposed Rulemaking, WC Docket No. 13-39 (rel. Feb. 7, 2013).

technology that aids emergency response to 9-1-1 calls made from mobile phones impacts consumer privacy. The Commission must ensure that whatever trade-offs it makes as it moves forward with the PSTN transition are done deliberately, after thorough consideration of all aspects of an issue.

PK also urged the Commission to issue a broader Notice of Inquiry in this proceeding that adopts a principled framework for moving forward in the PSTN transition and provides a unifying docket for the many existing proceedings that bear on this issue. Any party that seeks regulatory relief from the Commission must then first explain why its proposal will not compromise the Commission's fundamental principles. The Commission's framework would allow it to evaluate arguments like the ability of competition to achieve fundamental goals, and the efficacy of voluntary programs for users across all parts of the phone network.

The Commission could use a Notice of Inquiry to create coherence among the many complicated issues in these inter-related proceedings, and to establish that the basic principles by which the Commission will resolve issues will not vary or shift by proceeding. The Notice would focus the general discussion around the PSTN transition and recognize the other proceedings that have relevance to this issue. The Commission must also confirm that it plans to retain sufficient authority to ensure that calls are always completed, even after upgrades are made to the network.

In this proceeding, we have already seen many stakeholders come forward with their various wish lists for rules to include or not include in the post-transition PSTN regulatory structure. The Commission now has the opportunity to establish guiding principles for the duration of the transition and push for consensus.

Respectfully submitted,

/s/

Jodie Griffin

Staff Attorney

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